

# The Odisha Gazette



EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 429 CUTTACK, MONDAY, FEBRUARY 17, 2025/MAGHA 28, 1946

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## LABOUR & E.S.I. DEPARTMENT

### NOTIFICATION

The 11th February 2025

**S.R.O. No. 140/2025**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th December, 2024 passed in ID Case No. 09 of 2013 by the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Managing Director, M/s KJSA Steel & Power Division, At. Barapada, P.O. Gauli, Dist. Keonjhar and Shri Mukunda Pahi, S/o. Sindhu Pahi, R/o. At/P.O. Kardangi, Via Telkoi, Dist. Keonjhar was referred for adjudication is hereby published in the schedule below :—

### SCHEDULE

IN THE LOBOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 09 of 2013

Dated the 27th December 2024

*Present :*

Shri Raghu Nandan Das, LL.B.,  
Presiding Officer,  
Labour Court,  
Sambalpur.

*Between :*

The Managing Director, . . . First Party—Management  
M/s KJSA Steel & Power Division,  
AT. Barapada, P.O. Gauli,  
Dist. Keonjhar.

Vrs . . . Second Party—Workman  
Shri Mukunda Pahi,  
S/o Sindhu Pahi,  
R/o. At/P.O. Kardangi,  
Via-Telkoi,  
Dist. Keonjhar.

*Appearances :*

Shri Bibhu Prasad Panda & Associates, Advocate, Cuttack	... For the First Part—Management
Shri Balgopal Mishra, Advocate, Sambalpur	... For the Second Party—Workman
Date of conclusion of argument	... 13/12/2024
Date of order	... 27/12/2024

**AWARD**

This reference has been made by the Government in Labour & E.S.I. Department to this Court vide order, dated the 2nd February 2013 under Section 12 (5) read with Section 10(1) (c) of the I.D. Act, 1947 to adjudicate upon the following Industrial Dispute :—

“Whether the refusal of employment to Shri Makunda Pahi by the management of M/s KJSA Steel & Power Divn., At Barapada, P.O. Gauli, Dist. Keonjhar w.e.f. the 25th November 2011 is legal and/or justified ? If not, what relief Shri Pahi is entitled to ?”

2. After receipt of copy of above noted reference, the second party workman filed his statement of claim before this Court on dated the 16th August 2013. The case of the workman in brief is that he was employed by the first party since, dated the 15th October 2010, which is his employer and is responsible for the management and control of the establishment. The conduct of the workman all along his service was to the entire satisfaction of the superiors and there was no complaint against him. The first party is a Private Limited Company and is an ‘Industry’ within the definition of Section 2 (j) of the I.D. Act. As such, any workman engaged in this firm is entitled to protection under the said Act.

2.1 It is also the case of the workman that he was being paid his wages by the first party on monthly basis. He was assigned duty in the establishment as and when required by the management, and the second party is a workman as defined under Section 2 (s) of the I.D. Act and the dispute, as referred, is an Industrial dispute as defined under Section 2 (k) of the I.D. Act. The workman has worked since, dated the 15th October 2010 and his services were ‘continuous service’ as defined under Section 25-B of the I.D. Act.

2.2 The first party/management all of a sudden refused the service of the workman w.e.f. the 25th November 2011 without assigning any reason thereof, which amounts to retrenchment. This is also illegal because the first party did not observe the procedure laid down in Section 25-F/ 25-N of the I.D. Act. Before retrenchment by the first party, no retrenchment compensation has been paid to the second party, so also, “First come, last go” and “Last come, first go” principle was not observed.

The retrenchment of the second party/workman is *non est* for which he is deemed to be still in employment of the first party and is entitled for reinstatement with full back wages. After illegal retrenchment from service, the workman lodged complaint before the labour machinery at Keonjhar, which was admitted into conciliation. Due to adamant attitude of the Management, amicable settlement could not be arrived at, and conciliation ended in failure.

2.3 The management retained the service of workmen juniors to the Second Party violating Section 25-G of the I.D. Act, 1947. After retrenchment of services, the workman is leading a miserable life without any source of income. The establishment of management is very vast and

profitable one, which is engaging other workmen till date without giving any chance to the workman violating the provisions of Section 25-H of the I.D. Act, 1947.

With the above averments, the workman has prayed that his retrenchment w.e.f. the 25th November 2011 be declared as illegal and void *ab initio*; that he may be reinstated in his job forthwith with full back wages along with costs.

3. On the other hand, the first party management has filed its W.S. contending that the case of the workman suffers the malice of mis-joinder/non-joinder of parties contrary to the order of reference. M/s KJSA Steel and Power Division is a proprietorship firm without any post of Managing Director. It is also contended that the workman has raised the present industrial dispute to make undue claim against the management, which is misconceived, mis-represented and mis-construed.

It is also contended that the workman was engaged as a Trainee under the Management and was working as a Diploma Engineer @ Rs.4, 500 per month w.e.f. the 15th October 2010. During his service on dated the 18th October 2011 at 1.30 A.M., he was found sleeping while on duty. So, he was sought for an explanation by the management, in which he admitted his mistake and promised not to sleep during duty in future. On receipt of such explanation, the management had excused him.

3.1 After the said incident, again the workman was found sleeping on dated the 13th November 2011 during night shift. He was deployed in a responsible post and such negligence was unwarranted on his part. He attended his duty till, dated the 24th November 2011 and did not turn up thereafter. But, the workman alleges that he was refused to enter the premises of the factory on the 24th October 2011 without payment of his back wages and other dues. Throughout his complaint petition, he had alleged that one C.S. Panda working as Personnel Manager of the management had a grudge on him. But he has not filed any case against him.

3.2 It is also contended that without making any demand before the management, all of a sudden the management received copy of Notice No. 3349/DLO, dated the 31st December 2011 from the Conciliation Officer with a direction to appear before him on the complaint of the workman. From the Letter, it appeared about holding of conciliation between the parties on, dated the 10th January 2012. The matter adjourned to another date and the management received another letter from the C.O.. As per conciliation report, view and counter-views of both the parties were recorded. On dated the 13th March 2012, although the representative of the management attended the conciliation proceeding, in fact there is no statement recorded or asked from the representative of the petitioner-Company.

3.3 The management received another Letter No.1285/D.L.O., dated the 22nd June 2012 containing that there was non-attendance of the Petitioner-Company on previous dates. The C.O. had suppressed the fact that the representative of the Petitioner-Company had attended the conciliation proceeding on dated the 13th March 2012, and also on other dates.

While the situation remained thus, the C.O. issued Form- 'D' by R.P. intimating to appear on dated the 12th July 2012 to participate in the conciliation proceeding. Such Form-'D', dated the 3rd July 2012 vide Memo No. 1399, was received on dated the 15th July 2012, i.e., after three days from the scheduled date. However, the management intimated by its letter, dated the 16th July 2012 to the C.O. regarding belated receipt of Form-'D'.

3.4 It is further contended that on a bare perusal of the complaint petition, it was revealed that the C.O. had blamed Shri C.S. Panda, who was working as Personnel Manager at the time of

the incident on, dated the 13th November 2011. The workman had alleged about previous enmity with C.S. Panda. He had also alleged that at the time of his joining as a Diploma Engineer, said C.S. Panda had told "I will see how he completes even one year."

From the above allegations, it is clear that the dispute is purely a personal dispute between the workman and Shri C.S. Panda, and the Company had no role to play in the entire occurrence.

3.5 That apart, the workman himself is not confirmed about the date of refusal of employment. As per the complaint petition, the workman alleges that he was found sleeping for the second time on the 13th November 2011, but on the second page, he mentioned that he was refused employment on the 24th October 2011. It is also alleged by him that he was driven out from the Hostel on the 25th October 2011 contradicting his allegations that he was found sleeping during duty hours on dated the 13th November 2011. From the report of the C.O., it appears that he has patched up the latches and there has been a biased conciliation proceeding.

Without taking into account the non-appearance of the management before the C.O., the latter closed the conciliation proceeding with a failure report to the government. It appears from the failure report, dated the 25th September 2012 that the C.O. has resorted to falsehood by mentioning that the management had failed to attend without any intimation, whereas from all the records annexed, it is clear that due to belated receipt of letter, dated the 3rd July 2012 of the C.O., the management could not attend such proceeding.

3.6 It is further contended that the Petitioner-Company had not been giving a fair chance to express its defense. After submission of failure report, the State Government has made reference, which is silent regarding the conduct of the workman, who remained absent from duty on his own accord. The workman has manufactured a cock and bull story, and after neglecting his duties, being a lethargic person, has voluntarily abandoned his employment. This is further fortified from the fact that the second party has no where mentioned that he had approached the management against the refusal of employment. Such silence on the part of the workman makes a clear case of voluntary 'abandonment of employment', which does not come within the definition of industrial dispute.

3.7 After institution of I.D. Case before this Court, the management filed W.P. (C) No. 26129 of 2013 before the Hon'ble High Court assailing the order of reference, which was disposed of on dated the 22nd June 2022 by the Hon'ble Court with several directions.

In the case at hand, the workman has made no demand before the management prior to filing complaint before the labour authorities, for which this reference is without jurisdiction and cannot be adjudicated. In the parawise reply made to the statement of claim of the workman, the Management has denied all the allegations made against it in each para. With the above averments, it is contended that the claim application along with the order of reference is devoid of merit and not maintainable.

3.8 The workman has filed his rejoinder to the W.S. of the management denying all the assertions made and also denying all the allegations made against him in the W.S. .

4. Out of the pleading of the parties, this Court has framed the following issues :—

(1) Whether the refusal of employment to Shri Makunda Pahi by the management of M/s KJSA Steel and Power Division, At Barapada, P.O. Gauli, Dist. Keonjhar, with effect from the 25th November 2011 is illegal and/or justified ?

(2) If not, to what relief Shri Pahi is entitled ?

5. In order to prove the case, the workman has examined himself as W.W. No.1. He has examined another witness namely, Hemanta Kumar Behera, as W.W. No. 2. Similarly, he has exhibited documents, which have been marked from Exts.1 to Ext. 4. Likewise, the first party/management has examined one Abani Kumar Barik, M.W. No.1. Documents have been marked from Ext. A to Ext. B on behalf of the management.

6. *Issue No. (i)*—This issue is the main Issue of this reference. The specific pleading of the workman of this case is refusal of his service by the management w.e.f., the 25th November 2011 without assigning any reason thereof, which amounts to illegal retrenchment. It has also been pleaded that this is illegal due to non-observance of the procedure laid down in Section 25-F/25-N of the I.D. Act. It is also pleaded that the principle of “First come, last go” and “Last come, first go” has not been observed. On the other hand, the management has contended that the case of workman is a case of “voluntary abandonment of employment” .

6.1 The above contrary stands of the parties will be discussed at a later stage. In view of the order passed by the Hon'ble Court in W.P. (C) No. 26129 of 2013, dated the 22nd June 2022, that “All the contentions of the petitioner on the merits of the dispute are permitted to be urged before the Labour Court”, other specific pleading raised by the management has to be discussed first.

At the commencement of its W.S., management has contended that the present statement of claim of workman suffers from malice of mis-joinder/non-joinder of parties. It is averred that the Management is a proprietorship firm and there is no post of M.D. under the management. To corroborate this stand the management relied upon Ext. B which is a GST Registration Certificate. This document does not prove that the management is not an Industrial Establishment as per Section 2 (ka) of the I.D. Act. That apart, M.W. No.1 at Para.26 of his cross-examination has admitted that, the Management is an Industrial Establishment and it extracts iron from iron ores.

6.2 No post of M.D. available under the management does not mean that the case will suffer from non-joinder of necessary party. The person who is in-charge of the day to day affairs of the management will be/can be prosecuted.

Another pleading taken by the management in this case is, the State Government violated the provision of Rule 3 of the O.I.D. Rules, 1959 while making reference. But, there is no relation between Rule 3 and the present reference. As because, the present reference arises out of submission of conciliation failure report by the Conciliation Officer under Section 12 (4) of the I.D. Act. Moreover, Rule 3 is applicable when both parties to a dispute want to apply for a reference of the same to a Board, Court, Labour Court, or Tribunal by the appropriate Government. As such, the pleading of the management is totally untenable that the State Government have violated Rule 3 while making this reference.

6.3 Another specific pleading of the management is that the present dispute cannot be termed as an Industrial dispute, rather the same is a personal dispute between the workman and Mr. C.S. Panda, Manager (P & A) of the management. Much argument has been submitted on this point by the learned counsel for the management. On this aspect, the evidence of M.W. No.1 at Para. 31 is very much relevant. He has deposed that “It is true that Shri C.S. Panda was personnel Manager of our management, and all decisions taken by him were in his official capacity and not in his personal capacity”. From the above evidence of M.W. No.1, there is no doubt that there was any personal dispute between the workman and Shri C.S. Panda.

The management has tried to give a colour of personal dispute to an industrial dispute, as it appears from the evidence of M.W. No.1. The other evidence available at Para. 31 of M.W. No.1

also corroborates such fact. It is not in dispute that Shri C.S. Panda was an employee of the management and was working for and on behalf of it. Even the management did nothing for settlement of such dispute between the workman and Shri C.S. Panda, when it knew about existence of such dispute. The management could have made any effort for settlement of such dispute, but, as reveals from the evidence on record, no such attempt has been made. So it cannot be held that there was personal dispute between the workman and Shri C.S. Panda and there was no industrial dispute between the workman and the management.

6.4 It is un-disputed fact that the workman had joined with the management as a Diploma Engineer (Trainee) w.e.f., the 15th October 2010. As per his pleading, he had worked till the 24th November 2011, and on the 25th November 2011, he was refused employment. The management has pleaded that his service had not been confirmed. However, the evidence on record discloses that he had worked for about more than one year with the management. It appears that the service of the workman was continuous service as per Section 25-B of the I.D. Act, as because there is no contrary evidence produced by the management in this regard. If at all Ext.1, which is also a part of Ext. A relied upon by the management, and which is also a part of the original reference made to this Court, is to be believed, there were only two occasions, when the workman had committed mistakes during the performance of duty. Such instances are on the 18th October 2011 at 1.30 A.M. (mid-night) and on dated the 24th November 2011 at 1.26 A.M. .

6.5 For the mistake of the 18th October 2011, the workman was excused and his one day salary was deducted as token of punishment. It appears that after the second mistake committed on the 24th November 2011 at 1.26 A.M., he was served Notice. As he did not respond to the same, by the order of the management he was refused employment w.e.f., the 25th November 2011 and was directed not to come inside plant premises. The above facts had been stated by Shri C.S. Panda before the C.O., as reveals from Ext.1, which is also attached to Ext. A.

The above evidence on record shows that the workman was denied/refused employment w.e.f., the 25th November 2011. This is also the specific pleading and evidence on the workman at Para. 7 of his affidavit evidence. The management has taken stand, and M.W. No.1, at Para. 13 of his examination-in-chief, has deposed that the workman remained absent from duty on his own accord. The averments of such Para. 13 were suggested to the M.W. No.1 at Para. 35 of his cross-examination, when he simply denied that such evidence are false. However, no positive evidence was given to show that the workman remained absent on his own accord.

6.6 Even if, the workman remained absent on his own accord, M.W. No.1 at Para. 35 deposed that, management issued Notice to the workman when he did not join in his duty. However, no copy of such Notice have been filed, as reveals from Para. 35 & 38 of cross- examination of M.W. No.1.

It appears that after commission of second mistake on dated the 24th November 2011 at 1.26 A.M. by the workman, he was refused employment by the management w.e.f., the 25th November 2011. It was not a case of voluntary abandonment of employment as alleged by the management.

6.7 The next aspect of the present dispute is to consider if the management could not be provided with opportunity to put forth his defense before the C.O.-cum-D.L.O.. It has also alleged that the conciliation proceeding is a biased one and the C.O. has committed foul-play. It has also alleged that the C.O. did not consider about the non-appearance of Management as narrated in letter, dated the 16th July 2012 of the management, and closed the conciliation. It has also alleged that the C.O. had resorted to falsehood.

This Court does not find any reason why the C.O. would be biased towards the management. Ext.1 discloses that the C.O. issued as many as four nos. of letters on different dates for conciliation proceeding. It is also admitted fact that on 13th March 2012, both parties attended joint enquiry before the C.O .. Shri C.S. Panda had represented the management during such conciliation proceeding. The C.O. had recorded the views and counter views of both the parties on the 13th March 2012. It is pertinent to mention here that the management did not choose to examine Shri C.S. Panda as a witness in this case.

6.8 It is the specific stand of the management that it received the letter, dated the 3rd July 2012 of the C.O. on the 15th July 2012, i.e., after three days from the scheduled date of the 12th July 2012. For this, it could not appear before the C.O. on the 15th July 2012, and on the 16th July 2012 itself, it intimated about the fact to the C.O.. Copy of such letter, dated the 16th July 2012 of the management is attached to Ext. A. But no postal receipt has been field by the Management in this regard.

It is also the specific stand of the management that it received Notice, dated the 16th August 2013 from this Court to appear on dated the 16th September 2013 to participate in the proceeding. Thereafter, as averred at Para.18 of the W.S., the management straight away approached before the Hon'ble High Court vide W.P. (C) No. 26129 of 2013 assailing the order of reference of the Government. It is also pertinent to mention here that, at this stage, the management could have attempted for settlement of the dispute with the workman instead of approaching the Hon'ble High Court, though there was no legal Bar for the management.

6.9 As the management approached the Hon'ble High Court, the order of reference was stayed till, dated the 22nd June 2022, when the W.P. (C) was finally disposed of. The intention of the management and the suffering of the workman can very well be seen at this stage. If, in fact the management had not the opportunity to defend its case before the C.O., if could have asked the workman or could have attempted for settlement of the dispute before this Court. But, it approached the Hon'ble High Court, as stated earlier. Now, during cross-examination of the workman at Para.30 (last para), learned counsel for the management suggested, if the workman is ready and willing to join with the Management immediately tomorrow itself on his (learned counsel's) instruction to the Management. To this, the workman has replied that he will say about the same after taking decision on the same, which appears a right answer to this Court.

6.10 It has been argued by the management that even after receipt of Notice from the Hon'ble High Court in the above noted writ petition, the workman did not file counter affidavit before the Hon'ble High Court. He even did not join with the management and he did not deny in his rejoinder to the averments of the management in its W.S. at Para. 26. The above facts appear from Paras. 20 & 21 of the cross-examination of the workman. But, it appears from evidence on record that the workman has lost his source of income since 2011 and received the Notice from the Hon'ble High Court in the year, 2013; in such a situation to appear before the Hon'ble High court and contest that case against the management, is a very difficult task for him. Rather, it appears that, with an intention to harass the workman, the management approached the Hon'ble High Court and the stay order continued for a long period of eight years, causing hindrance in the proceeding of the labour dispute, as observed by the Hon'ble High Court vide order, dated the 22nd June 2022 at Paras. 1 & 2. The suffering of the workman can very well be imagined.

6.11 From the above analysis of evidence on record, it appears that the management had retrenched the service of the workman illegally without any disciplinary action taken against him. It is clearly revealed that it is not a case of voluntary abandonment of employment by the workman, as alleged by the management. Rather it is a case of illegal termination of service of the workman

coming under the definition of retrenchment as defined in Section 2 (oo) of the I.D. Act. As such, this Court is of considered opinion that the refusal of service of the workman by the management w.e.f. the 25th November 2011, is neither legal nor justified. Accordingly, this issue is decided in favour of the workman and against the management.

**7. Issue No.(ii)**—From the above discussion, it has been held that the termination of service of the workman by the management is illegal and unjustified. It is clearly revealed that the management has not observed the provision of Section 25-F of the I.D. Act.

In the case of Deepali Gundu Surwase -Vrs- K.J.A. Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324, the Hon'ble Apex Court has set forth detailed guidelines at Para.33 of the said judgment, which are to be followed while awarding or not, reinstatement with continuity of service and back wages, in case of wrongful termination of service.

7.1 In Para. 33 (i) of the said judgment, it has been held that “In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule”. The Hon'ble Court has also set forth other guidelines to be followed in such situation. In the instant case, the workman has prayed for reinstatement into service with full back wages, and any other relief, as deemed fit and proper. That apart, Section 11-A of the I.D. Act also empower the Labour Court to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, If any, as it thinks fit, or to give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal, if it is satisfied that such order of discharge or dismissal was not justified.

7.2 Admittedly, the workman of this case has fought this legal battle for long thirteen years, who has been victimized by the management, being tainted with *malice*. In the facts and circumstances of this case, this Court feels it proper to reinstate the workman with full back wages and other service benefits, as per his legal entitlements.

Hence, it is awarded as follows :

#### AWARD

The reference is adjudicated on contest in favour of the workman and against the management. This refusal of employment to workman Shri Mukunda Pahi by the management of M/s KJSA Steel & Power Divn., At Barapada, P.O. Guali, Dist. Keonjhar w.e.f., the 25th November 2011 is held to be illegal and unjustified. The management is directed to reinstate workman Shri Pahi in his former post with full back wages with all statutory benefits as per his legal entitlements.

Typed to my dictation and corrected by me.

R.N. DAS

27-12-2024

Presiding Officer

Labour Court, Sambalpur

R.N. DAS

27-12-2024

Presiding Officer

Labour Court, Sambalpur

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[No. 1498—LESI-IR-ID-0012/2025-LESI.]

By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government

List of witnesses examined on behalf of the Second Party /Workman :

W.W. No. 1 : Mukunda Pahi

W.W. No. 2 : Hemanta Kumar Behera

List of witnesses examined on behalf of the First Party/Management :

M.W.1 : Shri Abani Kumar Barik

List of documents marked as exhibits on behalf of the Second Party/Workman:

Ext. 1 : Copy of Conciliation Report, dated the 25th September 2012 by the D.L.O., Keonjhar

Ext. 2 : Copy of Duty Chart of 'C' shift, dated the 13th November 2011

Ext. 3 : Original Memo No. 3350, dated the 31st December 2011 issued by D.L.O., Keonjhar to the workman.

Ext. 4 : Original Memo No. 372, dated the 18th February 2012 issued to workman by DLO, Keonjhar

List of documents marked as exhibits on behalf of the First Party/Management:

Ext. A : Copy of writ petition filed before the Hon'ble High Court in W.P. (C) No. 26129 of 2013.

Ext. B : Copy of GST Registration Certificate of the First Party/Management.